

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 583, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete everything after the enacting clause and insert the
- 2 following:
- 3 SECTION 1. IC 4-4-3.9 IS ADDED TO THE INDIANA CODE
- 4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 5 JULY 1, 2005]:
- 6 **Chapter 3.9. Dealers in Agricultural Products**
- 7 **Sec. 1. As used in this chapter, "agricultural products"**
- 8 **includes fruits, vegetables, and eggs, but does not include dairy**
- 9 **products, grains, and other basic farm crops.**
- 10 **Sec. 2. As used in this chapter, "commissioner" means the**
- 11 **commissioner of agriculture.**
- 12 **Sec. 3. As used in this chapter, "dealer" means a person, an**
- 13 **association, an itinerant dealer, a partnership, or a corporation**
- 14 **engaged in the business of:**
- 15 **(1) the buying, receiving, selling, exchanging, or negotiating;**
- 16 **or**
- 17 **(2) the soliciting the sale, resale, exchange, or transfer;**
- 18 **of any agricultural products purchased from a producer,**
- 19 **producer's agent, or representative or received on consignment**
- 20 **from the producer or a producer's agent or representative or**
- 21 **received to be handled on a net return basis from the producer.**
- 22 **Sec. 4. As used in this chapter, "net return basis" means a**
- 23 **purchase for sale of agricultural products from a producer or**
- 24 **shipper at a price that is not fixed or stated at the time the**
- 25 **agricultural products are shipped from the point of origin. The**
- 26 **term includes all purchases made:**

(1) at the market price;

(2) at net worth: or

(3) on similar terms;

indicating that the buyer is the final arbiter of the price to be paid.

Sec. 5. As used in this chapter, "on consignment" means any receiving or sale of agricultural products for the account of a person, other than the seller, where the seller acts as the agent for the owner.

Sec. 6. As used in this chapter, "producer" means any producer of agricultural products.

Sec. 7. A dealer must have a license issued by the commissioner to engage in business.

Sec. 8. A dealer shall file an application for a license with the commissioner. The application must be on a form furnished by the commissioner and must include the following:

(1) The kind or kinds of agricultural products the applicant proposes to handle.

(2) The:

(A) full name or title of the applicant;

(B) name of each member of the association or partnership, if the applicant is an association or a partnership; or

(C) the name of each officer of the corporation, if the applicant is a corporation.

(3) The names of the local agent or agents of the applicant.

(4) The municipalities within which places of business of the applicant will be located, together with the street or mailing address of each place of business.

Sec. 9. If the applicant meets the requirements established by the commissioner, the commissioner shall issue a license to the applicant, upon the execution and delivery of a bond required under section 10 of this chapter. No fee for the license shall be charged. The license is valid until revoked or suspended as provided in this chapter.

Sec. 10. (a) Before a license is issued to the applicant under this chapter, the dealer shall make and deliver to the commissioner a surety bond.

(b) The bond must be in an amount determined by the commissioner not to exceed an amount equal to the maximum amount of products:

(1) purchased from or sold by producers; or

(2) estimated to be purchased or sold;

in any month. The bond must be in a form prescribed or approved by the commissioner. The bond must be in an amount to secure the faithful accounting for and payment to producers, or to the agents or representatives of producers for the proceeds of all agricultural products handled or sold by the dealer.

(c) Instead of a surety bond, the commissioner may accept a cash bond, which must be subject to the same claims and actions that would exist against a surety bond.

(d) If the commissioner determines that a previously approved bond has for any cause become insufficient, the commissioner may require an additional bond or bonds to be given. If:

- (1) an additional bond or bonds is not given within the time fixed by written demand; or
- (2) the bond of a dealer is canceled;

the license of the person shall be immediately revoked by operation of law without notice or hearing.

Sec. 11. (a) A person claiming that the person has been damaged by a breach of the conditions of a bond given by a dealer may file a complaint with the commissioner. The complaint must:

- (1) include a written statement of the facts constituting the complaint; and
- (2) be made within one hundred eighty (180) days after the alleged breach.

(b) If there is a finding that the dealer is in breach, and the bond or collateral posted is insufficient to pay in full the valid claims of producers, the commissioner may direct that the proceeds of the bond to be divided pro rata among producers.

Sec. 12. The commissioner may decline to grant a license or may suspend or revoke a license already granted if the commissioner is satisfied that the applicant or licensee has:

- (1) a money judgment entered against the dealer upon which execution has been returned unsatisfied;
- (2) made false charges for handling or services rendered;
- (3) failed to account promptly and properly or to make settlements with any producer;
- (4) made any false statement or statements as to condition, quality, or quantity of goods received or held for sale when the applicant or licensee could have ascertained the true condition, quality, or quantity by reasonable inspection;
- (5) made any false or misleading statement or statements as to market conditions or service rendered;
- (6) been found guilty of a fraud in the attempt to procure or in the procurement of a license; or
- (7) directly or indirectly sold agricultural products received on consignment or on a net return basis for the dealer's own account.

Sec. 13. Disputes occurring under this chapter are governed by IC 4-21.5.

Sec. 14. (a) Every dealer, upon the receipt of agricultural products on a consignment basis shall make and preserve for at least one (1) year a record specifying:

- (1) the name and address of the producer consigning the agricultural products;
- (2) the date of receipt;
- (3) the kind and quality of the products;
- (4) the amount of goods sold;
- (5) the name and address of the purchaser, provided that where sales total less than five dollars (\$5) in value, the sales

may be made to the order of cash;

(6) the selling price; and

(7) the items of expenses connected with the purchase.

(b) An account of sales, together with payment in settlement for the shipment, shall be mailed to the producer within forty-eight (48) hours after the sale of the agricultural products, unless otherwise agreed in writing.

Sec. 15. (a) Upon receipt of complaint from any interested person or upon the commissioner's own initiative, the commissioner may investigate:

(1) the record of any dealer;

(2) any transaction involving the solicitation, receipt, sale, or attempted sale of agricultural products;

(3) the failure to pay proper and true accounts and settlements at prompt and regular intervals;

(4) the making of false statements as to condition, quality, or quantity of goods received or in storage;

(5) the making of false statements as to market conditions with intent to deceive;

(6) the failure to make payment for goods received; or

(7) other alleged injurious transactions.

(b) For the purposes specified in subsection (a), the commissioner or the commissioner's agents may examine the:

(1) ledgers;

(2) books of accounts;

(3) memoranda; and

(4) other documents that relate to the transaction involved;

at the place or places of business of the dealer, and may take testimony thereon under oath.

Sec. 16. Whenever produce is shipped to or received by a dealer for handling, purchase, or sale at any market point and the dealer finds the produce to be in a spoiled, damaged, unmarketable, or unsatisfactory condition, unless both parties waive inspection before sale or other disposition of the produce, the dealer shall cause the produce to be examined by an inspector assigned by the commissioner for the purpose of inspecting the produce. An inspector shall execute and deliver a certificate to the dealer stating the:

(1) day, time, and place of the inspection; and

(2) condition of the produce;

and shall mail or deliver a copy of such certificate to the shipper.

Sec. 17. (a) In the absence of a written contract between the producer and a dealer to the contrary, any agricultural product that is:

(1) harvested by:

(A) a dealer;

(B) an agent or employee of a dealer; or

(C) an independent contractor retained by a dealer; or

(2) delivered to a dealer or an agent or employee of the dealer on the farm or at a facility of the dealer;

becomes the property of the dealer at the time of delivery, and the dealer shall become obligated to pay the agreed upon price as provided in subsection (b).

(b) A dealer shall make prompt payment for agricultural products purchased. Prompt payment shall mean payment twenty (20) days following delivery unless explicitly stated otherwise in a written contract agreed to by the producer and dealer.

(c) Unless explicitly stated otherwise in a written contract, at the time of delivery as specified in subsection (a), the dealer and the producer shall jointly issue a certificate of receipt and quality to the producer or the producer's agent. The certificate of receipt and quality must contain information, including the following:

- (1) Name and address of the dealer.
- (2) Name and address of the producer.
- (3) Delivery date and time of receipt.
- (4) Description of the product as to identity, quantity, quality, condition, and grade of the product.
- (5) Price per unit.
- (6) Terms of the transaction.

Information contained in the certificate of receipt and quality pertaining to quality, quantity, and price is presumed to be satisfied unless agricultural products are inspected and a certificate stating the products are in a different condition is issued by an inspector within forty-eight (48) hours after delivery of the agricultural products to the dealer.

(d) This section does not preclude the producer from commencing and maintaining an action against the dealer in any civil action.

Sec. 18. It is unlawful for any dealer to knowingly:

- (1) sell;
- (2) offer for sale; or
- (3) possess;

agricultural products that do not comply with the standards of quality established by the commissioner pertaining to the products.

Sec. 19. This article does not apply to:

- (1) farmers or groups of farmers in the sale of agricultural products grown by themselves;
- (2) persons who buy products paying with:
 - (A) cash;
 - (B) a certified check; or
 - (C) a cashier's check, or the equivalent; or
- (3) holders of food sales establishment licenses who conduct no business at the wholesale level and who have fewer than ten (10) employees.

Sec. 20. A person who knowingly violates this chapter commits

- 1 **a Class B misdemeanor.**
 (Reference is to SB 583 as introduced.)

and when so amended that said bill be reassigned to the Senate Committee on Agriculture and Small Business.

GARTON Chairperson